

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:) Chapter 11
RESIDENTIAL CAPITAL, LLC,) Case No. 12-12020(MG)
et al.,) Jointly Administered
Debtors.)

-----)
RESIDENTIAL CAPITAL, LLC,)
et al.,)
Plaintiffs,) Adversary Proceeding
No. 13-01343(MG)

vs.)

UMB BANK, N.A., as successor)
indenture trustee under that)
certain indenture, dated as)
of June 6, 2008; and WELLS)
FARGO BANK, N.A., third)
priority collateral agent and)
collateral control agent)
under that certain Amended)
and Restated Third Priority)
Pledge and Security Agreement)
and Irrevocable Proxy, dated)
as of December 30, 2009,)
Defendants.)

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiffs' Counter-Designation
Orange Highlighting = Joint Designation

The Debtors and Committee object to the
JSNs' use of the deposition of Mr. Kirpalani
on the ground that this deposition may
not be used under Bankruptcy Rule 7032.
The Debtors' and Committee's counter-
designations reflected herein are to be
admitted, if at all, only upon admission of
the JSNs' corresponding affirmative
designations.

VIDEOTAPED DEPOSITION OF SUSHEEL KIRPALANI
New York, New York
Thursday, November 14, 2013

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 68030

1
2 UNITED STATES BANKRUPTCY COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 OFFICIAL COMMITTEE OF)
5 UNSECURED CREDITORS, on)
6 behalf of the estates of the)
7 Debtors,) Adversary Proceeding
8 Plaintiff,) No. 13-01277(MG)
9 vs.)
10 UMB BANK, N.A., as successor)
11 indenture trustee under that)
12 certain indenture, dated as)
13 of June 6, 2008; and WELLS)
14 FARGO BANK, N.A., third)
15 priority collateral agent and)
16 collateral control agent)
17 under that certain Amended)
18 and Restated Third Priority)
19 Pledge and Security Agreement)
20 and Irrevocable Proxy, dated)
21 as of December 30, 2009,)
22 Defendants.)
23 -----)

24 November 14, 2013
25 4:08 p.m.

18 Videotaped Deposition of SUSHEEL
19 KIRPALANI, held at the offices of Kramer
20 Levin Naftalis & Frankel LLP, 1177 Avenue
21 of the Americas, New York, New York, before
22 Kristin Koch, a Registered Professional
23 Reporter, Registered Merit Reporter,
24 Certified Realtime Reporter and Notary
25 Public of the State of New York.

A P P E A R A N C E S:

KRAMER LEVIN NAFTALIS & FRANKEL

Attorneys for Committee of Unsecured
Creditors

1177 Avenue of the Americas

New York, New York 10036

BY: P. BRADLEY O'NEILL, ESQ.

KENNETH ECKSTEIN, ESQ.

DOUGLAS MANNAL, ESQ.

MILBANK TWEED HADLEY & McCLOY

Attorneys for Ad Hoc Committee of Junior
Secured Creditors

One Chase Manhattan Plaza

New York, New York 10005

BY: ALAN STONE, ESQ.

KELLY PRESSLER, ESQ.

1
2 A P P E A R A N C E S: (Continued)

3
4
5 QUINN EMANUEL URQUHART & SULLIVAN

6 Attorney for Susheel Kirpalani

7 51 Madison Avenue

8 New York, New York 10010

9 BY: SCOTT SHELLEY, ESQ.

10
11
12 JONES DAY

13 Attorneys for FGIC

14 555 South Flower Street

15 Los Angeles, California 90071

16 BY: RICHARD WYNNE, ESQ., Via telephone

17
18
19 ALSTON & BIRD

20 Attorney for Wells Fargo

21 90 Park Avenue

22 New York, New York 10016

23 BY: WILLIAM HAO, ESQ., Via telephone

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (Continued)

KELLEY DRYE & WARREN

Attorneys for UMB Bank, N.A.

101 Park Avenue

New York, New York 10178

BY: TIMOTHY MARTIN, ESQ., Via telephone

ALSO PRESENT:

CARLOS LOPEZ, Legal Video Specialist

1
2 (Kirpalani Exhibit 1, Declaration of
3 Susheel Kirpalani, marked for
4 identification.)

5 * * *

6 THE VIDEOGRAPHER: This is the
7 start of the tape labeled number 1 of the
8 videotaped deposition of Susheel Kirpalani
9 in the matter of In Re: Residential
10 Capital LLC.

11 This deposition is being held at
12 1177 Avenue of the Americas, New York,
13 New York on November 14, 2013 at
14 approximately 4:08 p.m.

15 My name is Carlos Lopez. I am the
16 legal video specialist from TSG Reporting
17 Inc. The court reporter is Kristin Koch in
18 association with TSG Reporting.

19 Appearances are noted.

20 Will the court reporter please swear
21 in the witness.

22 S U S H E E L K I R P A L A N I,
23 called as a witness, having been duly sworn
24 by a Notary Public, was examined and
25 testified as follows:

1
2 EXAMINATION BY

3 MR. STONE:

4 Q. Mr. Kirpalani, good afternoon. My
5 name is Alan Stone. I am with Milbank Tweed.
6 We are here on behalf of the Notes Trustee and
7 Ad-Hoc Committee of Junior Secured Noteholders.
8 We are here to take your deposition. We only
9 have a couple hours, so I am going to dispense
10 with the preliminaries and get right into it.

11 I am handing you what's been marked
12 as Exhibit 1 for purposes of your deposition
13 today.

14 MR. STONE: And for those on the
15 phone, this is the Declaration of Susheel
16 Kirpalani.

17 Q. Mr. Kirpalani, do you recognize this
18 document?

19 A. Yes.

20 Q. What is it?

21 A. It's the declaration that I prepared
22 and submitted on November 12th.

23 Q. Okay. And for what purpose did you
24 submit this declaration?

25 A. I submitted it in support of

1 Kirpalani

2 confirmation of ResCap's and the Creditors
3 Committee of ResCap's Chapter 11 plan.

4 Q. Okay. Am I correct that this plan
5 calls for a contribution of a certain amount of
6 money by Ally?

7 A. Yes.

8 Q. And how much money is that?

9 A. \$2.1 billion.

10 MR. WYNNE: We can't hear
11 Mr. Kirpalani on the phone. I don't know
12 if the mike is not working or what.

13 MR. STONE: You just need to keep
14 your voice up. I think that will work.

15 THE WITNESS: Maybe I will try and
16 talk more into the microphone.

17 MR. O'NEILL: Is that better, Rick?

18 MR. WYNNE: Yes. Thank you.

19 Q. Am I also correct that Ally was only
20 willing to make that contribution if they could
21 get a third-party release as a part of the
22 plan?

23 A. You would have to ask Ally, but
24 that's my understanding.

25 Q. I am just asking for your

1 Kirpalani

2 understanding. Okay.

3 You represent certain private
4 securities claimants?

5 A. Yes.

6 Q. Okay. And what type of claims did
7 or do those private securities claimants have
8 against ResCap and Ally?

9 A. What do you mean by what type of
10 claim?

11 Q. What's the nature of those claims?

12 A. It depends. Some clients have
13 claims for common law fraud, some clients have
14 statutory claims for rescission, some clients
15 have consumer protection statute-type claims,
16 but I would say that they are all claims that
17 parties misrepresented certain facts in
18 connection with their purchase of certificates
19 that were issued by various RMBS trusts.

20 Q. So you would agree with me that
21 these claims generally involve the purchase or
22 sale of securities?

23 A. Yes.

24 Q. From your clients' standpoint, they
25 were unwilling to support the plan and the

1 Kirpalani

2 third-party release unless they got an actual
3 distribution in the bankruptcy; is that right?

4 A. Can you repeat or rephrase the
5 question. I didn't quite get it.

6 Q. Sure. So from your clients'
7 standpoint, they were willing to settle their
8 securities claims against ResCap and Ally as
9 long as they could get an actual general
10 unsecured claim in the bankruptcy plan?

11 A. I'm not sure that to the clients the
12 actual plumbing or mechanics were that
13 important, but they certainly -- if they were
14 being asked to give up a right of theirs to be
15 paid something, they would want to get paid
16 something.

17 (Mr. Mannal enters.)

18 Q. Let me ask it this way: Would your
19 clients have been willing to settle had they
20 been asked to take a subordinated claim?

21 MR. O'NEILL: Objection.

22 A. I think -- I think there are some
23 missing parts of that question. The answer --
24 if that's the only -- if those are the things
25 that I have to assume for purposes of the

1 Kirpalani

2 question, would they settle in exchange for a
3 subordinated claim against ResCap and nothing
4 else, I would be pretty confident the answer
5 would be no.

6 Q. Okay. What parts were missing from
7 the question?

8 A. Well, I don't know -- when you are
9 saying would they be willing to settle, who are
10 they settling with? If in your hypothetical
11 they were settling with a third-party and that
12 third-party was providing enough money to them
13 that they feel they were justly compensated for
14 their losses, it's quite possible that they
15 would have agreed to a different structure, but
16 that was not -- that was never presented as an
17 offer, but --

18 Q. Okay. Well, let me ask it this way
19 then: Had the deal that was -- I'm sorry. Let
20 me try again.

21 If ResCap and Ally had offered your
22 clients precisely the same settlement that you
23 arrived at now with the only exception being
24 that they weren't getting a general unsecured
25 claim, but instead they were going to get a

Plaintiffs'
Objection
11:21-12:4
Lack of
personal
knowledge/
speculative
(FRE 602)

1 Kirpalani

2 subordinated claim, would they have settled?

3 MR. O'NEILL: Objection.

4 A. I have no idea.

5 MR. O'NEILL: Calls for speculation.

6 A. I have no idea.

7 Q. You have no idea. Okay.

8 (Mr. Eckstein enters.)

9 Q. In paragraph 14 of your declaration
10 one of the statements that you declare is that
11 "the settlement of Private Securities Claims
12 set forth in the PSA and the Allocation
13 Agreement was conducted at arm's length." What
14 did you mean by that?

15 A. That the settlement of the Private
16 Securities Claims was conducted at arm's
17 length, what do I mean by that?

18 Q. Yes.

19 A. I mean that it was a negotiation
20 that took place among parties that were not
21 affiliated with each other, with robust energy
22 and views for the various litigation risks that
23 each side were taking, and that there was no
24 collusion involved and that it was in good
25 faith.

1 Kirpalani

2 Q. Okay. How did the settlement come
3 about?

4 MR. O'NEILL: I will caution the
5 witness not to discuss the particulars of
6 the mediation.

7 A. Can you be more specific?

8 Q. Well, your counsel mentioned there
9 was a mediation. Is that right, there was a
10 mediation of these claims?

11 A. Yes. That's talked about in my
12 declaration. It's a matter of public
13 knowledge.

14 Q. Right. Who was involved in the
15 mediation?

16 A. Me.

17 Q. You were the only one?

18 A. No. There were about -- the Kramer
19 Levin security guards would know better, but I
20 think at some point there were over a hundred
21 people.

22 Q. Who was represented at the -- which
23 parties were represented at that mediation?

24 A. My clients.

25 Q. Okay. I understand that. And who

1 Kirpalani

2 else?

3 A. The Debtors. They were -- they had
4 representation there. Do you want me to just
5 keep going?

6 Q. Yes.

7 A. The Creditors Committee had advisors
8 here. Judge Peck was the mediator. He had two
9 clerks with him. I know FGIC was here. I know
10 MBIA was here. I know they had
11 representatives. I know Junior Secured
12 Noteholders, I believe are your clients, they
13 had principals as well as professionals here.
14 There were Senior Unsecured Noteholders that
15 were here. FHFA was here through counsel. I
16 don't believe the New Jersey Carpenters Class
17 was here, except for maybe one piece of it, and
18 maybe telephonically. I just don't remember.
19 No, that's not true. They did have a
20 bankruptcy counsel that was here in person for
21 some time. I mentioned MBIA. I mentioned
22 FGIC. The notes -- the RMBS trust had just an
23 army of people here, and there was the named --
24 the class representative of a class action of
25 borrowers, they were here. At least they had

1 Kirpalani

2 representatives here. If you gave me a list of
3 all of the major parties of interest in this
4 case, I would venture to say that they were all
5 here.

6 Q. Okay. Now, with respect to
7 the resolution --

8 A. Oh, I'm sorry. Ally was here.

9 Q. With respect to the mediation or
10 resolution of the Private Securities Claims,
11 was there a separate portion of the mediation
12 where there was a subgroup of parties that
13 discussed those claims?

14 A. I'm not sure what you mean when you
15 say was there a separate portion of the
16 mediation.

17 Q. In other words, did Judge Peck get a
18 subset of the various parties who were present
19 for the mediation together to discuss the
20 Private Securities Claims?

21 A. I don't think I should be disclosing
22 how a mediator conducted his mediation, so I am
23 not going to answer that.

24 Q. Okay. I am not asking for any
25 substance or positions people took or anything

1 Kirpalani

2 else. I am just asking about the procedure.

3 A. I understand, but that's kind of
4 the -- that's a trick of the trade, that's a
5 craft, and that's up to Judge Peck to decide if
6 he wants to disclose how he goes about doing
7 shuttle diplomacy or not doing shuttle
8 diplomacy. You know, I wouldn't talk about the
9 way I mediated the Dynegy case and I don't
10 think I would like it if people talked about
11 that either.

12 Q. Okay. Well, let me try it this way
13 then. Did all of the major constituencies in
14 this bankruptcy have input into the settlement
15 of those Private Securities Claims?

16 A. I would -- I would think so. My
17 understanding is that they had input.

18 Q. Did you or other representatives of
19 Private Securities Claimants ever get in a room
20 with Ally and ResCap and negotiate these -- the
21 resolution of these claims?

22 MR. O'NEILL: Objection.

23 A. One room with Ally and ResCap?

24 Q. Uh-huh.

25 A. No.

1 Kirpalani

2 Q. Did you ever get in a room with
3 Ally?

4 A. Many times.

5 Q. Did you ever get in a room with
6 ResCap?

7 A. Yes.

8 Q. You distinguished between -- in your
9 declaration between Settling Private Securities
10 Claimants and other Private Securities
11 Claimants.

12 In the deal that ultimately was
13 reached in the Plan Support Agreement are all
14 of the Private Securities Claims being
15 resolved?

16 A. I'm sorry. Can you -- you can have
17 it read back, but I lost my train of thought in
18 the middle of your question.

19 Q. Okay. No problem. Maybe I'll ask a
20 simpler question.

21 What's the difference between the
22 Settling Private Securities Claimants and the
23 other Private Securities Claimants that you
24 note in your declaration?

25 A. I think I know the answer. I just

1 Kirpalani

2 want to look back to the plan term --

3 Q. Sure. Take your time.

4 A. -- because I don't want to mess up
5 your record, so let me look.

6 Q. So the first paragraph you will see
7 the Settling Private Securities Claimants.

8 A. Okay. So the Settling Private
9 Securities Claimants are my clients. We were,
10 for lack of a better word, the anchor tenants
11 of the settlement that would later be rolled
12 out to what I defined as the -- I think it's
13 Additional Private Securities Claimants. So
14 that's the way I would characterize us, is we
15 were the anchors.

16 Q. And once you rolled out that
17 settlement to the Additional Private Securities
18 Claimants, did they agree to go along with the
19 settlement?

20 A. It was a process.

21 Q. But ultimately they agreed?

22 A. Ultimately they agreed. I'm happy
23 to say, ultimately I have unanimous accepting
24 class of creditors in a situation that,
25 frankly, I never thought it could be achieved.

1 Kirpalani

2 Q. In paragraph 14, at least in the
3 version of your declaration that I have, it
4 says -- there is a clause, at least, and this
5 is right before paragraph 15, that says:
6 "Based on the uncertainty surrounding treatment
7 and priority of more than \$20 billion of claims
8 against the Debtors' estates."

9 What does that \$20 billion of claims
10 refer to?

11 A. When you said at least the version
12 you have, you gave me a copy of this exhibit,
13 so --

14 Q. Yes. It should be the same as the
15 one I have.

16 A. Okay. What is the \$20 billion?

17 Q. Yes.

18 A. That is an estimate of the potential
19 claims for losses suffered by creditors that
20 are either the Settling Private Securities
21 Claimants, the Additional Private Securities
22 Claimants, or other holders of claims that
23 assert similar theories.

24 Q. Okay. The amount of \$235 million
25 that represents the amount of the general

1 Kirpalani

2 unsecured claim, in resolution of the Private
3 Securities Claims does that also include the
4 other claims -- does that correspond to the
5 \$20 billion worth of claims?

6 MR. O'NEILL: Object to form.

7 A. I just don't agree with the premise
8 of your question that there is a \$235 million
9 general unsecured claim.

10 Q. Okay. Maybe I got it wrong. Maybe
11 you can tell me what -- I guess I can be more
12 precise about it as well.

13 Am I correct that in resolution of
14 the Private Securities Claims there was
15 agreement to set up a Private Securities fund
16 of \$235 million?

17 A. That's a projected amount, but
18 subject to increase or decrease based on things
19 beyond the Creditors' control, yes, 235 million
20 was the projected amount to satisfy the claims
21 of Private Securities Claimants.

22 Q. Okay. Now, when you told me what
23 the \$20 million -- or \$20 billion worth of
24 claims represents, you mentioned the Settling
25 Private Securities Claimants, the Additional

1 Kirpalani

2 Private Securities Claimants and then persons
3 who held other similar claims.

4 A. I didn't say "other similar claims."
5 I said other claims asserting similar theories
6 of liability.

7 Q. Okay. Thanks for that correction.
8 Those persons who are asserting
9 other claims with similar liability theories,
10 are they going to be able to take from the PSC
11 fund as well?

12 A. No.

13 Q. No. Okay.

14 So they are still left out there?

15 A. They are not left out there. They
16 were resolved separately.

17 Q. Okay. If you look at paragraph 13,
18 there are some numbers there relating to the
19 aggregate estimated amounts for the Private
20 Securities Claims against Ally and against the
21 Debtors and AFI?

22 A. Right.

23 Q. Are those the estimated amounts of
24 liability that the Private Securities Claimants
25 would be seeking in their lawsuits?

1 Kirpalani

2 A. Yes.

3 Q. So that totals, by my math, some
4 \$3.8 billion. Why did you settle for
5 \$235 million?

6 MR. O'NEILL: Objection.

7 A. Couldn't get 3.8.

8 Q. Why couldn't you get 3.8?

9 MR. O'NEILL: Caution the witness
10 not to discuss anything that occurred in
11 the mediation.

12 A. Because to get 3.8 somebody would
13 have to pay me that and nobody was willing to
14 pay that.

15 Q. Okay. Do you think that amount is
16 fair?

17 MR. O'NEILL: 3.8?

18 MR. STONE: No. 235 million.

19 A. If I didn't think it was fair, I
20 wouldn't have let my clients sign onto it, so
21 yes, I do think it's fair.

22 Q. So it's fair to your clients?

23 A. I think it's fair to both sides.

24 Q. It's fair to both sides. Is it fair
25 to all constituencies?

1 Kirpalani

2 A. I think something is either fair or
3 it's not fair. So it's fair.

4 Q. It's fair to everyone?

5 A. Yes.

6 Q. Okay. In determining whether
7 \$235 million is fair, did you account for the
8 general litigation risk associated with those
9 claims?

10 A. Yes.

11 Q. How did you do that?

12 A. Well, which litigation risk are you
13 referring to?

14 Q. Well, I am putting aside any risk of
15 subordination. I am just talking about the
16 typical risk that you have in the types of
17 claims that you brought.

18 A. Then the answer is yes.

19 Q. Okay. And how did you account for
20 that?

21 A. How did I account for it?

22 Q. Yes.

23 A. \$235 million is a fraction of the
24 actual losses. The difference between the
25 amount received and the amount of losses

1 Kirpalani

2 represents a judgment about the risk of
3 collection, that goes to why it's not
4 3.8 billion, as well as the risk of winning. I
5 don't think there is any precise way to slice
6 and dice between 235 million and your number,
7 3.8 billion, to know how much relates to the
8 risk of collection, how much relates to the
9 risk of potentially losing on the merits, but I
10 think that clients and their representatives
11 made a judgment that that was a fair
12 resolution.

13 Q. Did you do any kind of risk analysis
14 with respect to the litigation, a formal risk
15 analysis?

16 A. I don't know what your formal risk
17 analysis looks like. We certainly analyzed our
18 clients' claims, if that's what you are asking.

19 Q. Okay. Let's talk about a simple
20 one. You just simply take the maximum
21 potential amount of recovery and apply some
22 factor based on your assessment of the risk.
23 Did you do that?

24 MR. O'NEILL: You are asking for his
25 work product at this point.

1 Kirpalani

2 MR. STONE: Are you instructing him
3 not to answer?

4 MR. O'NEILL: I mean, it's not my
5 privilege, but you are asking for him to
6 reveal his clients' privilege.

7 A. Can you read back or ask the
8 question again. If it's a yes/no question,
9 which I think you were asking me, I probably
10 could answer it.

11 Q. Okay. Did you simply take the
12 maximum potential amount of recovery and apply
13 a factor based on your assessment of the risk?

14 A. No.

15 Q. Did you account -- in determining
16 that the \$235 million is fair, did you account
17 for the risk that the claims could be
18 subordinated?

19 A. When you say "the claims," can you
20 be more precise? There are some claims that
21 have absolutely zero risk of being
22 subordinated, zero.

23 Q. Let's say then some claims could be
24 subordinated. Did you take that into account?

25 MR. O'NEILL: Objection.

1 Kirpalani

2 A. That some of those claims could be
3 subject to a risk of subordination?

4 Q. Yes.

5 A. Yes.

6 Q. How did you take that into account?

7 MR. O'NEILL: Objection.

8 A. By making a judgment call that
9 \$235 million appropriately reflected the risks
10 of collection and litigation and I would lump
11 subordination into the litigation pillar.

12 Q. Okay. In determining that the
13 \$235 million is fair, did you take into account
14 how money was to be distributed in the plan?

15 A. Did I take into account how money
16 was to be distributed? I'm not sure I
17 understand.

18 Q. Well, did you account for the
19 interests of others, put it that way, other
20 constituencies?

21 MR. O'NEILL: Objection.

22 A. Again, I still -- it's vague. I
23 don't understand what you mean, did I account
24 for the interests of others.

25 Q. Well, you agree with me that the

1 Kirpalani

2 issue of 510(b) subordination is an issue that
3 had been briefed before the court; is that
4 right?

5 A. Yes, among others.

6 Q. Right. And it was in dispute?

7 A. Yes.

8 Q. And if your clients lost on that,
9 some of their claims would have been
10 subordinated?

11 A. Lost where? In the bankruptcy court
12 or in the district court or the supreme court?

13 Q. Well, ultimately -- if they
14 ultimately lost, there was a risk that they
15 would be subordinated?

16 A. That some claims --

17 Q. Right.

18 A. -- of my clients would be
19 subordinated if the Debtors were to have
20 prevailed and gotten that order appealed all
21 the way up? Yes, there is a risk.

22 Q. And if those claims had been
23 subordinated, the likely outcome as to those
24 claims is your clients would have gotten
25 nothing at the end of the day?

1 Kirpalani

2 A. If they would have been
3 subordinated, subject to my earlier comment
4 about it being a final order no longer subject
5 to appeal, then yes, they wouldn't be receiving
6 a distribution based on subordinated claims.

7 Q. And you agree with me that one of
8 the benefits of settling for your clients was
9 that those claims as to which there was a risk
10 of subordination were now general unsecured
11 claims -- well, let me correct that -- were now
12 going to take from the PSC fund?

13 MR. O'NEILL: Objection. Object to
14 form.

15 A. I would agree that it's a benefit to
16 both sides to get that issue resolved.

17 Q. Okay. Is it a benefit to General
18 Unsecured Creditors for your clients to get a
19 distribution on claims as to which there was a
20 risk of subordination?

21 A. I think so.

22 Q. Why is that?

23 A. Because if I would have won my
24 summary judgment motion or trial, then my
25 clients and others asserting similar legal

1 Kirpalani

2 theories would have flooded the general
3 unsecured claims base with \$20 billion. That's
4 the number we have talked about before.

5 Q. Essentially you are saying there was
6 risk on both sides?

7 A. I'll take that bet any day. There
8 was a lot more risk to the Estate than there
9 was to us.

10 Q. Why do you say that?

11 A. Because I think our briefs were
12 better and I think we would have prevailed. In
13 fact, it was hard to convince my clients to
14 settle, because they knew how strongly I
15 believed in them.

16 Q. Okay. Now, would you agree with me
17 that subordinated securities claims cannot be
18 transformed into a general unsecured claim by
19 agreement of the Debtor and the Securities
20 Claimants?

21 MR. O'NEILL: Objection.

22 A. Explain what constitutes a
23 subordinated securities claim.

24 Q. One where we -- you and I both agree
25 that these are claims that need -- that should

1 Kirpalani

2 be subordinated, they are securities claims
3 that under 510(b) should be subordinated.

4 A. Whether we agree doesn't make any
5 difference, so I don't think that's correct.

6 Q. Okay. Let's say that a court of law
7 would find that under 510(b) they should be
8 subordinated.

9 A. And has that decision become final
10 and no longer subject to appeal?

11 Q. Sure.

12 A. And then what's the question?

13 Q. The question is would you agree with
14 me that those claims couldn't be transformed
15 into general unsecured claims by agreement of
16 the Debtor and the Securities Claimants?

17 MR. O'NEILL: Objection.

18 A. Yeah, I would agree with that.

19 Q. What about a securities claim that
20 has only a very small chance of surviving a
21 challenge based on subordination?

22 MR. O'NEILL: I am going to object
23 to all this on the grounds that it requires
24 him to speculate and to give legal
25 conclusions. I have a standing objection

1 Kirpalani

2 to this line of questioning.

3 A. What was the question?

4 Q. So if you had a securities claim as
5 to which there was almost no question that it
6 would be subordinated under 510(b), could the
7 Debtor and the Claimant on that security agree
8 that it would be treated as a general unsecured
9 claim?

10 A. Are we talking about some
11 hypothetical case, not this case?

12 Q. Yes.

13 A. I'd say if it's in the range of
14 reasonableness, then yes.

15 Q. If it's in the range of
16 reasonableness yes what?

17 A. Yes, parties can settle unresolved
18 issues if there is a small risk of litigation,
19 a large risk of litigation, sure.

20 Q. Okay. In determining that the
21 \$235 million was fair, did you take into
22 account the risk that an appeals court or the
23 U.S. Supreme Court might not agree that
24 securities claims as to which the 510(b)
25 subordination issue is disputed can be settled?

1 Kirpalani

2 MR. SHELLEY: I am going to object.

3 We are getting into work product again.

4 A. What was the -- did I consider --
5 ask me the question again.

6 Q. Yes. In determining whether the
7 \$235 million is fair, did you take into account
8 the risk that the Second Circuit or the U.S.
9 Supreme Court might hold that securities claims
10 as to which there is a dispute about whether
11 they should be subordinated under the 510(b)
12 can be settled?

13 A. I don't think I did, no. I'm not
14 sure I understand why that would be the case,
15 but I guess you will educate the court about
16 why I'm wrong, but no, I don't think so.

17 Q. Okay. So your working assumption is
18 that disputed claims can be settled and there
19 is no reason to think that that would ever be
20 overturned?

21 MR. O'NEILL: Objection.

22 A. Well, that's a different question,
23 but -- are you asking me that question?

24 Q. Yes.

25 A. I think there are risks that

1 Kirpalani

2 disputed claim settlements can be overturned in
3 many different circumstances. So of course
4 that could happen.

5 Q. Did you take that into account?

6 A. You asked me that already. Here in
7 this context --

8 Q. In this context.

9 A. -- did I take into account that the
10 510(b) settlement that's inextricably
11 intertwined with the global resolution of the
12 Private Securities Claimants' claims, did I
13 take into account whether an appeals court
14 would say that could not be resolved by
15 settlement? I answered that before. The
16 answer is no, I didn't take that into account.
17 I think -- I don't agree with the premise. I
18 actually thought that an appeals court would
19 applaud the result as opposed to potentially
20 overturn it. It's unprecedented.

21 Q. Would you agree with me that a
22 Debtor cannot pick out one or more members of a
23 particular class and give them different
24 consideration?

25 MR. O'NEILL: Objection. Calls for

1 Kirpalani

2 a legal conclusion.

3 A. I'd prefer to stick to the facts of
4 this case and that's the reason I'm here. I'm
5 happy over a drink to talk about the law with
6 you, but not -- I am not going to be deposed on
7 my ability to be a lawyer.

8 Q. Okay. You are not going to answer
9 the question?

10 A. No.

11 Q. Okay. If a court had ruled that
12 your clients' claims were to be subordinated
13 under 510(b), would your clients still be
14 supportive of a third-party release for Ally?

15 MR. O'NEILL: Objection. Calls for
16 speculation.

17 A. You say a court. You have to be
18 more clear. If a court -- I hear that as the
19 bankruptcy court. If Judge Glenn would have
20 said the Debtors win on summary judgment and my
21 clients' claims are subject to subordination, I
22 have every belief in the world that I would
23 have prevailed on appeal. So I don't know if
24 they would have wanted to settle. Maybe they
25 would have doubled down and said now we will

1 Kirpalani

2 just go for blood and try to get a hundred
3 cents on the dollar. I don't know.

4 Q. Okay. What if you appealed that
5 claim as far as you could and the answer was
6 not in favor of your clients, do you think they
7 would be supportive of a third-party release
8 for Ally?

9 MR. O'NEILL: Same objection.

10 A. I really -- again, it's leaving out
11 issues that need to be included for that
12 question to make sense to me. If that's all
13 there is, then no, they wouldn't be releasing
14 anybody. They wouldn't release the Debtor,
15 they wouldn't release Ally. Why would they?

16 Q. Taking a look at paragraph 14 of
17 your declaration, and I am focusing on the
18 sentence that's sort of in the middle of the
19 paragraph -- you don't have page numbers here,
20 so I can't tell you what page it's -- yes, it's
21 page 8, I guess.

22 It says: "The consensual resolution
23 of billions of dollars of securities claims
24 avoids the substantial time, expense and risks
25 associated with litigating such claims, in

1 Kirpalani

2 courts all over the country, and permits the
3 expeditious completion of the Debtors' Chapter
4 11 cases."

5 So, first of all, the avoidance of
6 substantial time, expense and risk associated
7 with litigating such claims in courts all over
8 the country, why is that beneficial to ResCap?

9 MR. O'NEILL: Objection.

10 A. It seems self-evident.

11 Q. Well, let me ask it this way:
12 The -- at least in terms of the exposure as
13 noted in paragraph 13 -- I'm sorry.

14 So anyway, part of the claims up to
15 \$1.4 billion are against Ally Securities.

16 Why would it benefit ResCap to avoid
17 the substantial time, expense and risk
18 associated with litigating those claims?

19 A. Well, the Debtors acknowledged very
20 early in the case that claims against its
21 parent would detract from management's time and
22 energy needed to reorganize, so they actually
23 sought an injunction to prevent those actions
24 from going forward. So putting aside its own
25 exposure, which I will come back to, I think

Kirpalani

there is a high degree of distraction of time and attention that would be better used elsewhere, such as maximizing the value of their assets in figuring out a way to stop burning so much money in administrative expenses to come out of Chapter 11 and they wouldn't be focusing on those, they would be trying to defend themselves in these other actions, and that may not make sense to you, but what you don't -- may not know is that there is an overlap of claims against the debtors and Ally, so although in paragraph 13 I said \$1.4 billion are asserted against Ally and \$2.4 billion are asserted against the Debtors and Ally, the 1.4 is subsumed within the 2.4, so there is overlap. So I would assume that the Debtors want to defend 1.4 billion in claims the same that they want to defend the 2.4 billion in claims. They might try to do that in the bankruptcy court. Venue over that was going to be another hotly-contested issue. I know my clients felt very strongly about having their cases tried where they were commenced, and I think after Stern v. Marshall,

1 Kirpalani

2 that they would have a good shot at getting
3 that.

4 Q. Now, focusing on the second part of
5 the sentence, it "permits the expeditious
6 completion of the Debtors' Chapter 11 cases."
7 How did it do that?

8 A. How did it permit the expeditious
9 completion? I guess we will find out next
10 week.

11 Q. What do you mean by that?

12 A. There is a confirmation hearing next
13 week. I don't believe there would be a
14 confirmation hearing next week if these claims
15 were not resolved.

16 Q. Well, could the company have
17 converted to Chapter 7 and done a liquidating
18 plan?

19 A. Don't know.

20 MR. O'NEILL: Objection.

21 A. If you are asking me could legally,
22 we will have that drink and we can talk about
23 it. Never thought about it here.

24 Q. Okay. In the next sentence you say:
25 "In addition, this settlement resolves

1 Kirpalani

2 uncertain litigation over whether the Private
3 Securities Claims may be subordinated under
4 Bankruptcy Code section 510."

5 Had you lost that issue, do you
6 still believe that a global resolution would
7 have been difficult?

8 MR. SHELLEY: Objection to form.

9 MR. O'NEILL: Objection.

10 A. If I had lost that issue in the
11 bankruptcy court?

12 Q. Uh-huh.

13 A. Yes, I think it still would have
14 been very difficult.

15 Q. Why is that?

16 A. Because I would have appealed.

17 MR. STONE: Why don't we go off the
18 record.

19 THE VIDEOGRAPHER: The time is
20 4:51 p.m. We are going off the record.

21 (Recess was taken from 4:51 to 4:53.)

22 THE VIDEOGRAPHER: The time is
23 4:53 p.m. We are back on the record.

24 BY MR. STONE:

25 Q. Just a couple more questions.

1 Kirpalani

2 Focusing on paragraph 13 of your
3 declaration, looking at the second sentence, it
4 says: "It is my understanding, based upon my
5 review of publicly available information and
6 discussions with representatives of the
7 additional PS Claimants that the recovery rates
8 represented by this settlement are generally
9 consistent with other settlements of claims
10 based on the purchase and sale of RMBS
11 certificates, although the specific recovery
12 rates for RMBS claims vary based on the
13 particular characteristics of such claims,
14 including, for example, whether the claims have
15 survived a motion to dismiss, or whether the
16 claims are based on statutes with less
17 stringent elements of proof, such as state blue
18 sky claims or claims under the Securities Act
19 of 1933."

20 A. Uh-huh, yes.

21 Q. What did you look at specifically?

22 A. I had one of my associates pull
23 together information of settlements that have
24 been announced since the financial crisis and
25 they fed me a bunch of that data when I was

1 Kirpalani

2 going into this mediation, and obviously I read
3 in the newspaper what these types of claims
4 settle for in the class action context.

5 Getting that type of data is very hard on the
6 private litigation side, because almost all of
7 them are subject to confidentiality agreements,
8 which you probably know, but I was able to get
9 some based on information that my firm
10 maintained in confidence so I could advise my
11 clients properly.

12 Q. Okay. With respect to the data that
13 you were fed by your associate in connection
14 with the mediation, do you still have that
15 data?

16 A. I don't think so.

17 Q. Have you looked?

18 A. No, nobody asked me to look. I
19 would note when I read Lucy Allen's expert
20 report, all of the information that she did
21 include there was consistent with what my
22 understanding was from the work that my firm
23 had done for me.

24 RQ MR. STONE: Okay. Well, I would ask
25 you that you go back and look at your files

1 Kirpalani

2 and see if you can find it.

3 And I'm sure you will take that under
4 advisement.

5 MR. O'NEILL: Yes.

6 Q. With respect to discussions with
7 representatives of the additional PS Claimants,
8 who did you talk to?

9 A. I'm sorry. Ask the question again.
10 You looked like you were reading and then I was
11 looking to see what you were reading, but I'm
12 not sure --

13 Q. Paragraph 13 again. Same sentence.
14 It says "and discussions with representatives
15 of the Additional PS Claimants" at the bottom
16 of page 7.

17 A. Yes.

18 Q. Who did you speak to?

19 A. There were -- there are 17 other
20 claimants in the -- what we call the AF 21,
21 Ally Financial 21, and we represent 4. The
22 other 17 all have different counsel. So I
23 don't remember the names of them, but I was on
24 calls with some of them, and then my team,
25 combined bankruptcy and RMBS litigators, did a

1 Kirpalani

2 lot of the discussions with them about the
3 nature of their clients' claims.

4 MR. STONE: I don't have any further
5 questions.

6 MR. O'NEILL: Nothing.

7 THE VIDEOGRAPHER: The time is
8 4:57 p.m. We are going off the record.
9 (Time noted: 4:57 p.m.)

10
11
12 _____
13 SUSHEEL KIRPALANI

14
15 Subscribed and sworn to before me
16 this day of 20 .

C E R T I F I C A T E

[illegible]

I, KRISTIN KOCH, a Notary Public
within and for the State of New York, do
hereby certify:

That SUSHEEL KIRPALANI, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 14th day of November,
2013.

KRISTIN KOCH, RPR, RMR, CRR, CLR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
SUSHEEL KIRPALANI	MR. STONE	7

-----EXHIBITS-----

KIRPALANI	PAGE	LINE
-----------	------	------

Exhibit 1

Declaration of Susheel Kirpalani.....	6	2
---------------------------------------	---	---

REQUESTS: 41

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In Re Residential Capital LLC

Dep. Date: November 14, 2013

Deponent: Susheel Kirpalani

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
-----	-----	-----------	-------------	--------

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

--	--	--	--	--

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2013.

(Notary Public) MY COMMISSION EXPIRES: _____